

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

HELDER PEIXOTO

Plaintiff,

v.

**TRANS UNION LLC, and
HARRY GAMBILL**

Defendants.

C.A. No: 1:04-cv-10437-JLT

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
FOR FAILURE TO PROSECUTE CLAIM**

Trans Union, by and through its attorneys, respectfully request this Honorable Court to dismiss Plaintiff's Complaint for failure to prosecute the claim, respond to discovery or to appear at a scheduled conference. In support of this Motion Trans Union joins in and adopts by reference the Motions and Memoranda of Law of co-defendants Equifax (Docket #25) and Experian (Docket #27).

I. INTRODUCTION

Plaintiff filed this action in February 27, 2004, claiming that Trans Union willfully and or negligently violated numerous provisions of the Fair Credit Reporting Act, 15 U.S.C. §1681 *et seq.* (the "FCRA"). Trans Union served its Initial Disclosures and written discovery in May 2004. To this date, plaintiff has failed to answer the discovery, request an extension or to interpose an objection. Plaintiff has failed to serve his initial disclosures or to cooperate in discovery or abide by the federal rules in any fashion.

On December 9, 2004, plaintiff failed to appear for a Scheduling Conference duly noticed by the Court. On December 13, 2004, the Court granted the motion of Trans Union's president

to be dismissed as an individual defendant. (Docket #16) Plaintiff failed to file any opposition to the motion to dismiss the individual defendant.

For the reasons and authorities more fully set forth in the Memoranda of Law filed by Equifax and Experian, to which plaintiff has failed to file an opposition for over six (6) months, Trans Union submits its instant Motion to Dismiss should be granted.

WHEREFORE, Trans Union respectfully requests this Honorable Court dismiss plaintiff's claim pursuant to Rule 41(b), with prejudice.

Respectfully Submitted,

/s/ Mardic Marashian

MARDIC MARASHIAN
BONIN & MARASHIAN
77 Franklin Street, 4th Floor
Boston, MA 02110-1510
(617) 723-2525; Fax: (617) 723-3163

Of Counsel:

Bruce S. Luckman (*pro hac vice*)
Kogan, Trichon & Wertheimer, P.C.
1818 Market Street, 30th Floor
Philadelphia, PA 19103
(215) 575-7600; Fax: (215) 575-7688

*Counsel for Defendant,
Trans Union LLC*

Dated: October 4 , 2005